

Rule 3, Ariz. R. Crim. P.

Scope of *Terry* stop.....Revised 1/2010

In *Terry v. Ohio*, the United States Supreme Court held that an officer may make a brief investigatory stop of a person based on “specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion.” 392 U.S. 1, 21 (1968). Thus, “[a] police officer may make a limited investigatory stop in the absence of probable cause if the officer has articulable, reasonable suspicion, based on the totality of circumstances, that the suspect is involved in criminal activity.” *State v. Box*, 205 Ariz. 492, 497, ¶ 16, 73 P.3d 623, 628 (App. 2003).

There is no rigid time limitation on *Terry* stops, but an investigative detention under *Terry* must last no longer than necessary to effectuate the purpose of the stop. *United States v. Sharpe*, 470 U.S. 675, 685-6 (1985); *Florida v. Royer*, 460 U.S. 491, 500 (1983); *State v. Teagle*, 217 Ariz. 17, 23, ¶ 21, 170 P.3d 266, 272 (App. 2007).

No single factor is conclusive in determining when a permissible *Terry* stop – an investigatory stop/seizure based on reasonable suspicion -- becomes an “arrest” requiring probable cause. *State v. Clevidence*, 153 Ariz. 295, 298, 736 P.2d 379, 382 (App. 1987). A person is under arrest when a reasonable person, innocent of any crime, would reasonably believe that he was not free to leave. *State v. Winegar*, 147 Ariz. 440, 448, 711 P.2d 579, 587. However, “there is no ‘bright line rule’ to apply when making this determination, only the approach of reason and common sense applied to the totality of the particular circumstances.” *State v. Romero*, 178 Ariz. 45, 49, 870 P.2d 1141, 1145 (App. 1993). Relevant factors include the proximity between the location of

the crime and the scene of the stop, the amount of time between the crime and the stop, and the duration of the stop, *State v. Solano*, 187 Ariz. 512, 516, 930 P.2d 1315, 1319 (App. 1996), as well as “the officer’s display of authority, the extent to which defendant’s freedom was curtailed, and the degree and manner of force used,” *State v. Acinelli*, 191 Ariz. 66, 70, 952 P.2d 304, 308 (App. 1997), *citing State v. Ault*, 150 Ariz. 459, 464, 724 P.2d 545, 550 (1986).

For example, a defendant surrounded on a street during daylight by six armed officers who is told not to move her hands and who watches her companion being frisked is under arrest when the officers ask her to accompany them to City Hall. *Winegar*, 147 Ariz. at 447, 711 P.2d at 586. On the other hand, an officer who finds himself alone at dusk in an alley investigating a burglary that occurred moments earlier is justified in treating a man found hiding in the alley as if that man is armed and dangerous, and may handcuff the man during an investigatory stop without thereby turning the encounter into an arrest. *State v. Blackmore*, 186 Ariz. 630, 925 P.2d 1347 (1996). Similarly, an officer who, while alone at night, stops two individuals on suspicion of murder, does not arrest them when he draws his gun and orders them to lie down, if he fears they are armed and dangerous. *Romero*, 178 Ariz. 45, 870 P.2d 1141; see also *In re Roy L.*, 197 Ariz. 441, 445, ¶ 12, 4 P.3d 984, 988 (App. 2000) (officer who drew his gun when he knew that a juvenile defendant also had a gun did not thereby arrest the juvenile defendant).